

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jenzo Duque	Team: Squad #8	CCRB Case #: 201805161	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 01/25/2018 5:00 PM	Location of Incident: In front of 445 Castleton Avenue; 121st Precinct stationhouse	Precinct: 120	18 Mo. SOL 7/25/2019	EO SOL 7/25/2019	
Date/Time CV Reported Mon, 06/25/2018 3:15 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Mon, 06/25/2018 3:15 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Daniel Nicoletti	05379	942271	GVSD Z1
2. DT3 Carlos Velez	05575	919817	GVSD Z1

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT2 William Warren	02757	933467	GVSD Z1
2. DT3 Mike Civil	02114	935092	GVSD Z1

Officer(s)	Allegation	Investigator Recommendation
A.SGT Daniel Nicoletti	Abuse: Sergeant Daniel Nicoletti stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.SGT Daniel Nicoletti	Force: Sergeant Daniel Nicoletti pointed his gun at § 87(2)(b)	
C.DT3 Carlos Velez	Force: Detective Carlos Velez pointed his gun at § 87(2)(b)	
D.SGT Daniel Nicoletti	Force: Sergeant Daniel Nicoletti pointed his gun at § 87(2)(b)	
E.DT3 Carlos Velez	Force: Detective Carlos Velez pointed his gun at § 87(2)(b)	
F.SGT Daniel Nicoletti	Abuse: Sergeant Daniel Nicoletti damaged § 87(2)(b)'s property.	
G.DT3 Carlos Velez	Abuse: Detective Carlos Velez damaged § 87(2)(b)'s property.	
H.SGT Daniel Nicoletti	Force: Sergeant Daniel Nicoletti used physical force against § 87(2)(b)	
I.DT3 Carlos Velez	Force: Detective Carlos Velez used physical force against § 87(2)(b)	
J.SGT Daniel Nicoletti	Abuse: Sergeant Daniel Nicoletti searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
K.SGT Daniel Nicoletti	Abuse: At the 121st Precinct stationhouse, Sergeant Daniel Nicoletti strip-searched § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
L.SGT Daniel Nicoletti	Abuse: At the 121st Precinct stationhouse, Sergeant Daniel Nicoletti did not obtain medical treatment for § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		

## Case Summary

On January 25, 2018, at approximately 5:00 p.m., in front of 445 Castleton Avenue in Staten Island, Sergeant Daniel Nicoletti, Detective Carlos Velez, Detective Mike Civil, and Detective William Warren of the Gun Violence Suppression Division, apprehended § 87(2)(b) while he sat inside § 87(2)(b)'s vehicle. Sgt. Nicoletti stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegation A: Abuse of Authority - § 87(2)(g)**). As the officers approached the vehicle, § 87(2)(b) brandished a firearm, and both Sgt. Nicoletti and Det. Velez pointed their guns at § 87(2)(b) and allegedly pointed their guns at § 87(2)(b) (**Allegation B: Force - § 87(2)(g)**). **Allegation C: Force - § 87(2)(g)** **Allegation D: Force - § 87(2)(g)** **Allegation E: Force - § 87(2)(g)** § 87(2)(b) discarded the firearm inside the vehicle and did not comply with commands to exit the vehicle. Sgt. Nicoletti and Det. Velez then allegedly broke the windows of § 87(2)(b)'s vehicle (**Allegation F: Abuse of Authority - Exonerated; Allegation G: Abuse of Authority - § 87(2)(g)**). Sgt. Nicoletti and Det. Velez then grabbed and pulled § 87(2)(b) out of § 87(2)(b)'s vehicle (**Allegation H: Force - § 87(2)(g)**). **Allegation I: Force - § 87(2)(g)** The officers then placed both § 87(2)(b) and § 87(2)(b) in separate vehicles. Sgt. Nicoletti then searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegation J: Abuse of Authority - § 87(2)(g)**). The officers transported § 87(2)(b) and § 87(2)(b) to the 121<sup>st</sup> Precinct stationhouse, and Sgt. Nicoletti then strip-searched § 87(2)(b) (**Allegation K: Abuse of Authority - § 87(2)(g)**). While Sgt. Nicoletti strip-searched § 87(2)(b) § 87(2)(b) stated he wanted medical attention and Sgt. Nicoletti allegedly did not obtained medical treatment for § 87(2)(b) (**Allegation L - § 87(2)(g)**). § 87(2)(g), § 87(4-b) (b)

There was no video footage available for this incident. § 87(2)(b) and § 87(2)(b) were arrested as a result of this incident.

## **Findings and Recommendations**

**Allegation (A) Abuse of Authority: Sergeant Daniel Nicoletti stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is undisputed that on January 25, 2018, at approximately 5:00 p.m., in front of 445 Castleton Avenue, Sgt. Nicoletti stopped the vehicle in which § 87(2)(b) § 87(2)(b) and § 87(2)(b) were occupants.

According to § 87(2)(b) sworn statement (Board Review 01), § 87(2)(b) went to the incident location to pick up his daughter from school. § 87(2)(b) drove § 87(2)(b) to the location in § 87(2)(b)'s 1999 Nissan Ultima while § 87(2)(b) sat in the front passenger's seat. § 87(2)(b) had only ten dollars in his right front-pants pocket, and nothing else, on his person. No one else was present in the vehicle. § 87(2)(b) and § 87(2)(b) did not stop prior to arriving at the location. No one interacted with § 87(2)(b) or § 87(2)(b) prior to arriving at the location.

§ 87(2)(b) exited the Nissan and crossed the street to enter Michael's Deli, at 454 Castleton Avenue, to order a sandwich. § 87(2)(b) then returned to the Nissan and sat in the driver's seat. § 87(2)(b) exited the Nissan to retrieve the sandwich, but § 87(2)(b) told him staff had said to wait a few minutes for it. § 87(2)(b) spoke to an individual who walked down the street, but she did not respond. § 87(2)(b) then sat in the front passenger seat of the Nissan and closed the door. Neither § 87(2)(b) nor § 87(2)(b) interacted with anyone else in the vicinity. No one approached the Nissan or entered it at any point in time.

Approximately five to seven minutes passed, and three unmarked police vehicles surrounded the Nissan. An unmarked van parked to the right of the front passenger seat. Two unmarked sedan parks behind the Nissan and to the left of the driver's seat, respectively. Approximately 11 plainclothes officers, among them Sgt. Nicoletti and Det. Velez, exited the three unmarked vehicles, with their guns drawn.

§ 87(2)(b) refused to provide statements regarding this incident.

In Sgt. Nicoletti's statement to the CCRB (Board Review 02), § 87(2)(b) was the subject of Det. Velez's investigation, and Sgt. Nicoletti was the immediate supervisor for Det. Velez's case. § 87(2)(b), § 87(2)(e), § 87(2)(f)

The officers possessed an arrest warrant for § 87(2)(b) (Board Review 15). The officers possessed a search warrant for both a residence in § 87(2)(b)'s name and for his body cavity (Board Review 16). Sgt. Nicoletti estimated § 87(2)(b) had conducted approximately five to eight prior narcotics transactions to undercover officers. When asked if he was present for any of the previous transactions involving § 87(2)(b) Sgt. Nicoletti estimated almost all of them. When asked if § 87(2)(b) was alone for the previous narcotics transactions, Sgt. Nicoletti stated not for all of them. § 87(2)(b) was not involved in any prior narcotics transactions. The incident was Sgt. Nicoletti's first encounter with § 87(2)(b)

§ 87(2)(b), § 87(2)(e), § 87(2)(f)

§ 87(2)(b). Approximately 30 minutes prior to § 87(2)(b)'s arrival at the location, Lieutenant William Buchanan of the Gun Violence Suppression Division conducted a tactical meeting at the 121<sup>st</sup> Precinct stationhouse, and discussed where to stage vehicles for the transaction. When asked if the officers expected to encounter one civilian or two during the transaction, Sgt. Nicoletti stated the officers did not know what to expect. § 87(2)(e), § 87(2)(f)

§ 87(2)(b). The officers did not know who would arrive with § 87(2)(b) for the transaction. Sgt. Nicoletti did not recall the specific vehicle § 87(2)(b) and § 87(2)(b) occupied during the incident, but stated it was a sedan. Sgt. Nicoletti had not observed § 87(2)(b) inside the sedan during prior encounters.

§ 87(2)(e), § 87(2)(f)

§ 87(2)(b). The

§ 87(2)(b), § 87(2)(e), § 87(2)(f)

§ 87(2)(b). Sgt. Nicoletti drove to the location with Detective Mike Civil and Detective William Warren of the Gun Violence Suppression Division. The sedan which § 87(2)(b) occupied was parked on the southside of Castleton Avenue, across from 445 Castleton. Sgt. Nicoletti's vehicle drove westbound down Castleton Avenue. The officers discussed how to approach the vehicle, with Det. Warren approaching the driver's side while Sgt. Nicoletti and Det. Civil approached the passenger's side. The officers' intention upon approaching the vehicle was to place § 87(2)(b) under arrest.

The vehicle § 87(2)(b) occupied was double-parked on the street and the officers parked their vehicle approximately two to three-car lengths in front of it. Sgt. Nicoletti, Det. Civil, and Det. Warren then exited their vehicle and approached as previously planned. Sgt. Nicoletti did not recall Det. Velez being present when the officers approached the vehicle. Sgt. Nicoletti recognized § 87(2)(b) immediately from previous encounters with him. § 87(2)(b) sat in the front passenger seat while § 87(2)(b) sat in the driver's seat. Sgt. Nicoletti and § 87(2)(b) made eye contact, and upon approaching the front passenger door, Sgt. Nicoletti commanded § 87(2)(b) to open the door.

§ 87(2)(e), § 87(2)(f), § 87(2)(g)

§ 87(2)(b) arrived in a vehicle during each narcotics transaction, in a black Honda specifically, the same one he occupied during the incident. § 87(2)(b) was not a part of Det. Velez's investigation. Det. Velez believed that the officers would only encounter § 87(2)(b) during the transaction on the incident date. § 87(2)(b), § 87(2)(e), § 87(2)(f), § 87(2)(g) (Group 1: Confidential Source or CIA)

Det. Velez conducted the tactical meeting, which consisted of a safety briefing, directions of travel, and discussion of the predetermined arrest location. § 87(2)(b), § 87(2)(e), § 87(2)(f)

The black Honda § 87(2)(b) occupied was parked on the northside of Castleton Avenue. The field team consisted of three unmarked vehicles: one parked on the intersection of Brighton Avenue and Castleton Avenue, one parked on Ridgewood Place facing Castleton Avenue, and Det. Velez's vehicle parked on Castleton Avenue and Hart Boulevard. At approximately 5:00 p.m., the field team arrived at the location. Upon arriving, Det. Velez observed a high number of children and parents double-parked in front of a school. § 87(2)(e), § 87(2)(f)

Det. Velez then asked Sgt. Nicoletti to exit their unmarked vehicle and cover the sidewalk in the event that § 87(2)(b) attempted to escape. Det. Velez drove past the intersection of Castleton Avenue and Richmond Avenue but could not readily identify the vehicle § 87(2)(b) occupied, as several black vehicles were parked in front of the school. Det. Velez then made eye contact with § 87(2)(b) who was seated in a black Honda. Det. Velez made a

U-turn and parked behind the black Honda. Det. Velez and Det. Civil then exited their unmarked vehicle and walked up to the front passenger side of the Honda from behind. Det. Velez then attempted to open the front passenger door, as his intention was to remove § 87(2)(b) from the vehicle and place him under arrest.

Patrol Guide Procedure 208-1 regarding the Law of Arrest (Board Review 04), specifies that a uniformed member of the service may make an arrest with a warrant, “When the warrant is addressed to a uniformed member of the service or to the department of which he is a member, and, [the] warrant [is] issued by New York City Criminal Court... [an officer may] arrest at any time, and anywhere within the State.”

People v. De Bour, 40 N.Y.2d 210 (1976) (Board Review 05), ruled that, “Where a police officer entertains a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor, the Criminal Procedure Law authorizes a forcible stop and detention of that person.”

§ 87(2)(b)'s Arrest Warrant (Board Review 15), states, “An Accusatory instrument having been filed with this Court charging § 87(2)(b) § 87(2)(b) the defendant in the criminal action herein, with the commission of the Felony of NY State Penal Law 220.43 et al., and the defendant not having been arraigned upon the accusatory instrument by which this criminal action against him was commenced and this Court requiring his appearance before it for the purpose of arraignment...you are, therefore, commanded forthwith to arrest the defendant named above and bring him before this Court without unnecessary delay.” The Arrest Warrant lists the Supreme Court of the State of New York, § 87(2)(b) as the issuing body.

§ 87(2)(b)'s Search Warrant (Board Review 16), states, “To any police officer of the New York City Police Department: You are hereby authorized and directed to search for and to seize the following property: Cocaine, heroin, fentanyl, and other controlled substances in violation of New York State Penal Law Article 220; any and all narcotics paraphernalia, including packaging material, cutting material and scales; currency and other evidence of proceeds from narcotics trafficking;...any and all records pertaining to the possession and sale of narcotics and the participation in a narcotics-related conspiracy;...electronic communication equipment;...and evidence of ownership and use of the target premises, or the use of property located therein by any person...You are hereby authorized and directed to search the following: the person of § 87(2)(b) DOB § 87(2)(b).” The Search Warrant lists Honorable § 87(2)(b) of the Criminal Court of the City of New York, § 87(2)(b), as the issuing body.

Because Sgt. Nicoletti was the supervisor on scene during the incident, the investigation is attributing the vehicle stop to his authority.

Both officers provided generally consistent statements regarding the investigation into § 87(2)(b) including their possession of an arrest warrant and criminal indictments against him. § 87(2)(e), § 87(2)(f), § 87(2)(g)

§ 87(2)(b), the facts surrounding § 87(2)(b)'s arrest are not in dispute. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (B) Force: Sergeant Daniel Nicoletti pointed his gun at § 87(2)(b)**

**Allegation (C) Force: Detective Carlos Velez pointed his gun at § 87(2)(b)**

**Allegation (D) Force: Sergeant Daniel Nicoletti pointed his gun at § 87(2)(b)**

**Allegation (E) Force: Detective Carlos Velez pointed his gun at § 87(2)(b)**

It is undisputed that after the officers approached the front passenger window, Sgt. Nicoletti pointed his gun at § 87(2)(b) and Det. Velez pointed his gun at § 87(2)(b)

§ 87(2)(g)

According to § 87(2)(b) sworn statement (Board Review 01), the 11 officers, among them Sgt. Nicoletti and Det. Velez, exited their unmarked vehicles and pointed their guns at § 87(2)(b) and § 87(2)(b). The officers commanded § 87(2)(b) and § 87(2)(b) to put their hands up and both complied immediately. The officers did not issue § 87(2)(b) or § 87(2)(b) any additional commands at that point in time. The officers then approached the Nissan.

In Sgt. Nicoletti's statement to the CCRB (Board Review 02), § 87(2)(b) did not comply when Sgt. Nicoletti commanded him to open the front passenger door. § 87(2)(b) instead spoke with § 87(2)(b) and remained seated. Sgt. Nicoletti could not hear the statements made between § 87(2)(b) and § 87(2)(b). Sgt. Nicoletti attempted to open the front passenger door contemporaneously with issuing commands to § 87(2)(b). Sgt. Nicoletti could not open the door because it was locked. Det. Warren attempted to open the driver's door and stated it was locked as well. Sgt. Nicoletti commanded § 87(2)(b) to exit the vehicle again and still he would not comply. Det. Civil then struck the front passenger window with his baton, breaking it. Sgt. Nicoletti observed § 87(2)(b) fully removed a firearm from his waistband and placed it underneath the front passenger floor mat. Sgt. Nicoletti and Det. Civil both stated, "Gun," upon observing the firearm. Sgt. Nicoletti was pressed up against the front passenger door when § 87(2)(b) removed the firearm from his waistband. Sgt. Nicoletti denied having his view obscured by anything at that point in time. Sgt. Nicoletti did not recall the firearm he observed nor its color; however, upon further questioning, he clarified that he believed it to be a revolver.

Sgt. Nicoletti did not recall what transpired between Det. Warren and § 87(2)(b) during the same time frame, as he was focused on § 87(2)(b) and the firearm believed to be inside the sedan. Sgt. Nicoletti did not observe any other officers draw their firearms and point them at either § 87(2)(b) or § 87(2)(b). Sgt. Nicoletti did not recall drawing his firearm and pointing it at either § 87(2)(b) or § 87(2)(b). Sgt. Nicoletti did not observe any officer draw or remove their firearm at any point in time. Sgt. Nicoletti did not recall drawing or removing his firearm at any point in time. When asked if anything other than the knowledge of a firearm inside the sedan led him to perceive § 87(2)(b) as a threat, Sgt. Nicoletti stated he knew § 87(2)(b) arrest history contained shootings and firearm possession. Nothing other than his knowledge of a firearm being inside the sedan led Sgt. Nicoletti to perceive § 87(2)(b) as a threat.

Det. Velez provided a somewhat consistent statement with Sgt. Nicoletti (Board Review 03). After attempting to open the front passenger door, Det. Velez struck the window and § 87(2)(b) made eye contact with him. Det. Velez commanded § 87(2)(b) to open the door and referred to him by first name, but § 87(2)(b) did not respond to Det. Velez's commands. § 87(2)(b) then leaned back in his seat, as though reclining it, while hiking himself upward. Det.





officers issued any additional commands to § 87(2)(b) or to § 87(2)(b) prior to breaking the windows. Sgt. Nicoletti and Det. Velez broke the front passenger window specifically. When asked how the officers broke the windows, § 87(2)(b) stated that they used a pole or a ram.

In Sgt. Nicoletti's statement to the CCRB (Board Review 02), Sgt. Nicoletti's intention for attempting to open the front passenger door was to remove § 87(2)(b) from the vehicle and place him under arrest. Sgt. Nicoletti commanded § 87(2)(b) to open the door, as it was locked, and § 87(2)(b) did not comply. Det. Warren attempted to open the driver's door and could not, stating it was locked as well. Det. Civil then struck the front passenger window with his baton, breaking it. Sgt. Nicoletti did not recall what transpired between Det. Warren and § 87(2)(b) as his focus was on § 87(2)(b). Sgt. Nicoletti did not recall whether Det. Warren broke the driver's window in a similar fashion. § 87(2)(b) was determined to be under arrest upon refusing to open the driver's door. Sgt. Nicoletti stated § 87(2)(b) was charged with obstruction of governmental administration at that point in time. Sgt. Nicoletti did not observe § 87(2)(b) resist arrest. Sgt. Nicoletti did not observe § 87(2)(b) do anything resistant other than refusing to open the driver's door.

Det. Velez provide a somewhat consistent statement with Sgt. Nicoletti (Board Review 03). After Det. Velez pointed his gun at § 87(2)(b) he commanded § 87(2)(b) to show him his hands and drop the firearm he observed § 87(2)(b) pulling from his waistband. § 87(2)(b) complied by leaning forward and then sitting back up with his hands open in the air. Det. Velez did not observe the firearm at that point in time, nor did he see where the firearm had gone inside the sedan. § 87(2)(b) still would not open the door and Det. Velez attempted to open it after holstering his gun. Det. Velez then commanded Det. Civil to break the front passenger window, and Det. Civil did so with his baton. The driver's side window was not broken in a similar fashion. After apprehending both § 87(2)(b) and § 87(2)(b) Det. Velez observed the driver's door of the sedan was open and that the driver's window had not been damaged. When asked whether § 87(2)(b) was considered under arrest, Det. Velez stated that when he observed a firearm in the sedan, both § 87(2)(b) and § 87(2)(b) were under arrest at that point in time.

Patrol Guide Procedure 221-01 (Board Review 06), states, "MOS will use only reasonable force necessary to gain control or custody of a subject." The reasonableness of an officer's use of force is based upon the totality of circumstances known by the MOS at the time of usage.

§ 87(2)(b), § 87(2)(g)

Because Sgt. Nicoletti was the supervisor on scene, the investigation is attributing the property damage to his authority. Because Det. Velez testified that he commanded Det. Civil to break the front passenger window, the investigation is also attributing the property damage to his authority.

While both the officers acknowledged that the front passenger window was broken, and neither could testify with any certainty as to what transpired on the driver's side of the vehicle, the facts surrounding said actions do not remain in dispute. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation H: Sergeant Daniel Nicoletti used physical force against § 87(2)(b)**

**Allegation I: Detective Carlos Velez used physical force against § 87(2)(b)**

§ 87(2)(g)

According to § 87(2)(b) sworn statement (Board Review 01), Sgt. Nicoletti grabbed § 87(2)(b) by the forearms and pulled him out through the front passenger window of the Nissan. Det. Velez and Det. Civil then handcuffed § 87(2)(b) and moved him towards an unmarked sedan parked behind the Nissan.

In Sgt. Nicoletti's statement to the CCRB (Board Review 02), Det. Civil opened the front passenger door while Sgt. Nicoletti grabbed § 87(2)(b) removed him from the sedan, and placed him in handcuffs. Sgt. Nicoletti did not know how Det. Civil opened the front passenger door. Sgt. Nicoletti denied pulling § 87(2)(b) out of the sedan window, though he acknowledged grabbing § 87(2)(b) and pulling him out into the street. Sgt. Nicoletti denied forcefully pulling § 87(2)(b) as he exited it willingly upon Sgt. Nicoletti grabbing him. Sgt. Nicoletti denied using force to handcuff § 87(2)(b) and § 87(2)(b) complied with the process of handcuffing. Sgt. Nicoletti estimated he handcuffed § 87(2)(b) within seconds.

Det. Velez provided a somewhat consistent statement with Sgt. Nicoletti (Board Review 03). Det. Velez reached into the vehicle through the broken front passenger window, unlocked the door using the interior handle, and then opened it. Det. Velez grabbed § 87(2)(b) by his hands and pulled him out of the black Honda, while turning him around to face it. § 87(2)(b) pushed off Det. Velez's hands, throwing his arms outward while stating, "Get off of me." Det. Velez continued to state "police" to § 87(2)(b) grabbed him by both arms, and then pulled him onto the ground in an intentional takedown. When asked if any subsequent struggle ensued while Det. Velez and § 87(2)(b) were on the ground, Det. Velez stated he already controlled § 87(2)(b)'s arms, and held his wrists until he was able to handcuff him. Det. Velez did not need assistance from other officers to handcuff § 87(2)(b).

Patrol Guide Procedure 221-01 regarding Force Guidelines (Board Review 06), states, "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances." The procedure also states the following factors may be considered when determining the reasonable use of force: "the nature and severity of the crime/circumstances, actions taken by the subject, immediacy of the perceived threat or harm to the subject/members of service/bystanders, whether the subject is actively resisting custody, and the subject's violent history," among others.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation J: Sergeant Daniel Nicoletti searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

§ 87(2)(b), § 87(2)(g)

According to § 87(2)(b) sworn statement (Board Review 01), after Det. Velez and Det. Civil handcuffed him, the officers placed § 87(2)(b) in the rear of an unmarked sedan parked behind the Nissan. § 87(2)(b) sat in the middle rear passenger seat and he could see through the front windshield from his vantage point. Det. Civil sat in the rear passenger seat behind the driver, while Det. Velez sat in the driver's seat. Sgt. Nicoletti and the remaining eight officers then began searching the Nissan. Officers opened the driver's door, the front passenger's door, and both rear passenger doors. Officers entered the Nissan and opened the trunk. § 87(2)(b) did not know what other compartments the officers opened or entered during their search. Sgt. Nicoletti, who stood near the front passenger's seat, then stated that he had found a firearm, and he held it up for officers to see. § 87(2)(b) could not see where Sgt. Nicoletti found the firearm in the Nissan, or what type of firearm Sgt. Nicoletti found from his vantage point. § 87(2)(b) later learned through paperwork related to his arrest that the firearm Sgt. Nicoletti found was a Smith & Wesson .38 caliber revolver. § 87(2)(b) denied owning a Smith & Wesson .38 caliber revolver. § 87(2)(b) did not know if § 87(2)(b) owned a firearm. § 87(2)(b) did not know if § 87(2)(b) owned a Smith & Wesson .38 caliber revolver. § 87(2)(b) had left no items inside § 87(2)(b)'s Nissan. § 87(2)(b) did not know what items § 87(2)(b) had inside the Nissan.

In Sgt. Nicoletti's statement to the CCRB (Board Review 02), after handcuffing § 87(2)(b) and § 87(2)(b) the officers transported both to the 121<sup>st</sup> Precinct stationhouse, in separate police vehicles. Sgt. Nicoletti did not recall in which vehicle officers transported § 87(2)(b). Sgt. Nicoletti sat inside the vehicle that transported § 87(2)(b) however, Sgt. Nicoletti did not recall if said vehicle was the same one he had driven to the incident location. Sgt. Nicoletti instructed Det. Civil to safeguard the firearm inside the sedan while awaiting the Evidence Collection Team's arrival at the stationhouse. Det. Civil then entered the sedan and drove it to the 121<sup>st</sup> Precinct stationhouse. No other officer entered the sedan at any point in time. Sgt. Nicoletti denied entering the vehicle at any point in time. Sgt. Nicoletti was not aware of any vehicle search conducted on scene. Neither § 87(2)(b) nor § 87(2)(b) claimed ownership of the firearm at any point in time. All the vehicles, including the sedan and those transporting both prisoners, left the scene at the same time.

Det. Velez provide a somewhat consistent statement with Sgt. Nicoletti (Board Review 03). Det. Velez placed § 87(2)(b) in the unmarked Mini-Van he drove to the incident location; however, he did not recall in which vehicle § 87(2)(b) was placed. Det. Velez then walked back to the front passenger seat of the sedan, where he observed the firearm § 87(2)(b) had discarded—a revolver—beneath the floor mats. Det. Velez then locked the doors of the sedan and Det. Civil drove the sedan to the stationhouse.

People v. Belton, 55 N.Y.2d 49 (1982) (Board Review 07), ruled that, "justification for an automobile search contemporaneous with a valid arrest arises, however, not only from the

mobility of an automobile, or the reduced expectation of privacy as to materials within the automobile, or both, but also from the circumstances which validate the arrest...A valid arrest for a crime authorizes a warrantless search – for a reasonable time and to a reasonable extent – of a vehicle and of a closed container visible in the passenger compartment of the vehicle which the arrested person is driving or in which he is a passenger when the circumstances given reason to believe that the vehicle or its visible contents may be related to the crime for which the arrest is being made (as possibly containing contraband or as having been used in the commission of the crime) or there is reason to believe that a weapon may be discovered or access to means of escape thwarted.”

People v. Blasich, 73 N.Y.2d 673 (1989) (Board Review 18), ruled that when, “the very circumstances that supply probable cause for the arrest may also give the police probable cause to believe that the vehicle contains contraband, evidence of the crime, a weapon or some means of escape...a warrantless search of the vehicle is authorized, not as a search incident to arrest, but rather as a search falling within the automobile exception to the warrant requirement...Thus, the proper inquiry in assessing the propriety of a Belton search is simply whether the circumstances gave the officer probable cause to search the vehicle. Whether the officer had probable cause to arrest an occupant of the vehicle for one or more crimes is significant. Which of those crimes the officer selected when formally notifying the suspect that he was under arrest has little bearing on the matter.”

Because Sgt. Nicoletti was the supervisor on scene, the investigation is attributing the vehicle search to his authority.

§ 87(2)(b), § 87(2)(g)

**Allegation K: At the 121<sup>st</sup> Precinct stationhouse, Sergeant Daniel Nicoletti strip searched**

§ 87(2)(b)

It is undisputed that at the 121<sup>st</sup> Precinct stationhouse, Sgt. Nicoletti strip searched § 87(2)(b)

§ 87(2)(b)

According to § 87(2)(b) sworn statement (Board Review 01), Det. Velez and Det. Civil transported him to the 121<sup>st</sup> Precinct stationhouse. Sgt. Nicoletti then told § 87(2)(b) that

he would conduct a strip search on him, but he did not specify why he would conduct it at that time. Sgt. Nicoletti, Det. Velez, and two plainclothes officers who had been on scene, escorted § 87(2)(b) to a private room and strip searched him. Sgt. Nicoletti conducted the strip search. Sgt. Nicoletti told § 87(2)(b) to remove his clothing and § 87(2)(b) complied. Sgt. Nicoletti told § 87(2)(b) to bend over and spread his cheeks, and § 87(2)(b) complied. At no point did any officer touch § 87(2)(b) during the strip search. The officers then escorted § 87(2)(b) to the prisoner holding pen.

In Sgt. Nicoletti's statement to the CCRB (Board Review 02), once the officers transported § 87(2)(b) and § 87(2)(b) to the 121<sup>st</sup> Precinct stationhouse, Det. Velez conducted a strip search of § 87(2)(b). Sgt. Nicoletti authorized the strip search. § 87(2)(e), § 87(2)(f)

§ 87(2)(b) but the officers had only recovered a small amount from § 87(2)(b). § 87(2)(e), § 87(2)(f) quantity was greater than that which the officers recovered from § 87(2)(b) at the stationhouse. Sgt. Nicoletti did not recall the number of narcotics recovered from § 87(2)(b) at the stationhouse. Officers also told Sgt. Nicoletti that, during transport to the stationhouse, they had observed § 87(2)(b) moving his hands towards his buttocks while rear-handcuffed. Sgt. Nicoletti did not recall which officers transported § 87(2)(b) to the stationhouse. Sgt. Nicoletti did not observe § 87(2)(b) engaging in suspicious movements. Sgt. Nicoletti did not observe § 87(2)(b) attempting to conceal anything inside his person.

Det. Velez conducted the strip search in a "side area" of the prisoner cells. When asked to describe the "side area", Sgt. Nicoletti stated it was blocked from the public eye and a private space. Det. Velez and Sgt. Nicoletti were present while Det. Velez conducted the strip search. Det. Velez instructed § 87(2)(b) to drop his pants and squat. Sgt. Nicoletti did not believe that Det. Velez commanded § 87(2)(b) to remove any other articles of his clothing. Sgt. Nicoletti denied making statements during the strip search. Neither Det. Velez nor Sgt. Nicoletti made physical contact with § 87(2)(b) while Det. Velez conducted the strip search. Nothing was recovered or observed in § 87(2)(b)'s person. The strip search lasted approximately one minute.

Det. Velez provided a somewhat consistent statement with Sgt. Nicoletti (Board Review 03). When asked why a strip search was conducted on § 87(2)(b) Det. Velez stated it was due to both the recovery of narcotics from his person at the stationhouse and his known history of concealing contraband inside his person. § 87(2)(b) was arrested twice during Det. Velez's investigation for possession of a controlled substance. In one of these instances, the arresting officer transported § 87(2)(b) to the hospital because he had inserted a quantity of narcotics into his anal cavity. During that incident, which occurred in § 87(2)(b) the quantity of narcotics was recovered from inside § 87(2)(b) by hospital staff. The same known history allowed Det. Velez to obtain a search warrant for § 87(2)(b)'s person, which superseded the strip search. § 87(2)(b) made no reference to concealing contraband in his anal cavity while transported to the 121<sup>st</sup> Precinct stationhouse. § 87(2)(b) did not reach for his clothing or move in such a way that he seemed to be concealing something from Det. Velez.

Because the officers corroborated § 87(2)(b)'s testimony regarding him having been strip searched, the investigation is crediting that this happened.

Because Sgt. Nicoletti was the immediate supervisor present and the approving officer for the strip search, the investigation is attributing the strip search to his authority.

Patrol Guide Procedure 208-05 subsection C-1 regarding strip searches (Board Review 09), states, “Strip searches may only be conducted with the knowledge and approval of the arresting officer’s immediate supervisor or the borough Court Section supervisor. A strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods.”

Subsection C-2 states, “The arresting officer...must describe the factual basis for the request to the officer’s immediate supervisor/borough Court Section supervisor...Note, this is a different standard than the probable cause required for the arrest. The immediate supervisor/borough Court Section supervisor, based on the facts presented, will determine if a strip search will be conducted. The supervisor authorizing the strip search is responsible for ensuring the search is conducted properly.”

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation L: At the 121<sup>st</sup> Precinct stationhouse, Sergeant Daniel Nicoletti did not obtain medical treatment for § 87(2)(b)**

Whether Sgt. Nicoletti did not obtain medical treatment for § 87(2)(b) remains in dispute.

According to § 87(2)(b) sworn statement (Board Review 01), after Det. Civil and Det. Velez handcuffed him, § 87(2)(b) realized that he sustained lacerations to his right forearm, due to the broken glass of the front passenger window, but he did not request medical attention of any officer. While inside the private room where Sgt. Nicoletti conducted § 87(2)(b)’s strip search, § 87(2)(b) told Sgt. Nicoletti that he had sustained injuries and wanted medical attention. After Sgt. Nicoletti strip searched him, officers escorted § 87(2)(b) to the prisoner holding pen, where § 87(2)(b) remained and stated that he wanted medical attention. § 87(2)(b) never received medical attention.

In Sgt. Nicoletti’s statement to the CCRB (Board Review 02), upon apprehending § 87(2)(b) at the incident location, Sgt. Nicoletti did not observe any injuries to § 87(2)(b) at that point in time. § 87(2)(b) did not complain of pain or injuries to Sgt. Nicoletti. § 87(2)(b)

§ 87(2)(b) did not request medical attention from Sgt. Nicoletti at any point in time. Sgt. Nicoletti was not aware of § 87(2)(b) requesting medical attention from any other officer at any point in time. Sgt. Nicoletti was not aware of § 87(2)(b) being treated by Emergency Medical Services or being taken to the hospital. Sgt. Nicoletti had no reason to believe § 87(2)(b) needed medical attention at any point in time. No officer relayed any such concern to Sgt. Nicoletti at any point in time.

Det. Velez provided a consistent statement with Sgt. Nicoletti (Board Review 03).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 12).
- Sgt. Nicoletti has been a member of service for 12 years and has been a subject in five CCRB complaints and 9 allegations, none of which were substantiated. § 87(2)(g)
- Det. Velez has been a member of service for 21 years and has been a subject in nine CCRB complaints and 26 allegations, of which one was substantiated:
  - 201506359 involved a substantiated allegation of Search (of person) against Det. Velez. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A.
  - § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of January 22, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 13).
- § 87(2)(b)
- § 87(2)(b)

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date



Squad Leader: \_\_\_\_\_  
Signature                      Print Title & Name                      Date

Reviewer: \_\_\_\_\_  
Signature                      Print Title & Name                      Date